IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.08.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM

and

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

Writ Appeal Nos.2064/2000 and 845/2001

The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai-625 002. ... Appellant in W.A.2064/2000 & Respondent No.3 in W.A.No.845/2001 (3rd Respondent in W.P.17527/00)

vs.

1.Sri Subramaniaswamy Bajanai Madam Trust,
Rep.by its Managing trustee K.T.Ramasamy Pillai,
27-A, Ayyanar Koil Street,
Anuppanadi, Madurai-625 009. ... Respondent No.1 in W.A.2064/2000 & Appellant in W.A.No.845/2001

2.The State of Tamil Nadu, rep.by
Commissioner and Secretary,
Department of Municipal Administration,
Fort St.George, Chennai.

3.The District Collector of Madurai,
Madurai Collector Office,
Madurai-625 020.

4.Revenud Divisional Officer,
Revenue Divisional Office,
Madurai-625 020.

5.The Tahsildar,
Madurai South,
South Tahsildar Office,
Madurai-625 020. ... Respondents 2 to 5 in W.A.2064/00 and Respondents 1,2,4,&5 in W.A.845/01

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Writ Appeals under Clause 15 of Letters Patent against the order of the learned Single Judge, dated 31.10.2000 and 28.11.2000, made in W.P.No.17527/2000 presented under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents to pay a compensation at Market value prevailing as on today with interest for the land of the petitioner measuring about 2280 square feet in T.S.No.2528, Madurai Annuppanadi Village, in Chinnakanmai Street, which was forcibly occupied by the third respondent by trespassing.

For Appellant in W.A.2064/2000 & Respondent No.3 .. Mr.V.T.Gopalan, Senior Counsel for Mr.P.Srinivasan

For Respondent No.1 in W.A.2064/2000 & Appellant in W.A.No.845/2001 .. Mr.K.V.Ananthakrishnan

For Respondent Nos.2 to 5 in W.A.2064/00 and Respondents 1,2,4 and 5 in W.A.845/01 .. Mr.C.Thirumaran Govt.Advocate.

JUDGMENT

P.SATHASIVAM,J

Writ Appeal No.2064/2000 has been filed against the order of the learned Single Judge, dated 31.10.2000, made in W.P.No.17527/2000 in and by which the learned Judge allowed the writ petition and directed the Commissioner, Madurai Corporation, to pay compensation at the market value with interest at 15% per annum from the date of taking possession as claimed by the writ petitioner.

2.The case of the first respondent herein/writ petition is briefly stated here under: According to the writ petitioner, which is a Trust, the property comprised in T.S.No.2528, Madurai Anupanadi Village in Chinnakanmoi Street, is owned by the Trust. The total extent of the land is 22,098 sq.ft. i.e. 51 cents and the same is nanja land. In 1980, the officials of the Madurai Corporation made an attempt to trespass into the aforesaid land for the purpose of laying two roads, east to west. Anticipating the same, the petitioner sent letters, telegrams to the Corporation. A notice dated 01.09.1980 under Section 80 CPC and Section 490 of the Madurai City Municipal Corporation Act was also sent to other respondents. In spite of the protest, the officials of the Madurai Corporation trespassed into the land and laid down a 30 feet road and the total area trespassed by them for the purpose of laying down the road is an extent of 5.22 cents, i.e. 2,280 sq.ft. After trespass, though the Corporation decided to place a Resolution before the Council Meeting

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for acquisition of land in occupation and allotment of fund for such acquisition, the compensation amount has not been paid. Thereafter, the petitioner sent various letters/petitions from 1982 to 2000. The Corporation sent reply for few letters/petitions. For the past 20 years, the Corporation did not take any interest for paying the compensation, on the other hand, it requested the petitioner Trust to execute an "Inam Sashanam" (Gift Deed). Thereafter, the Trust sent a letter, dated 05.01.1999 requesting the Corporation to pay compensation or to give alternate land by way of exchange. In view of the attitude of the Corporation in not settling the compensation amount inspite of two decades, the petitioner has approached the High Court by sway of a writ petition.

3.Before the learned Single Judge, the contesting party, namely Madurai Corporation, the third respondent therein, has not filed counter affidavit. The learned Judge by order dated 31.10.2000, after finding that the Corporation was not justified in not paying compensation amount inspite of several requests made by way of letters/petitions, directed the Corporation to verify the market value of the land from the Sub-Registrar's Officer as per the guidelines and determine the compensation amount and pay the same with interest at 15% per annum from the date of taking possession. The learned Judge also directed that the same shall be complied with within four weeks from the date of the order, i.e. 31.10.2000. Hence the above appeal.

4.The writ petitioner Trust, questioning the order dated 28.11.2000 of the very same learned Judge in the same writ petition has filed Writ Appeal No.845/2001. While passing the order on 31.10.2000, the learned Judge directed the writ petition to be posted after four weeks for reporting compliance. The same was listed on 28.11.2000 for reporting compliance. On that date, before the learned Judge it was represented on behalf of the Madurai Corporation that Writ Appeal has been filed in W.A.No.2064/2000 against the order in W.P.No.17527/2000 and the Division Bench has also granted stay. In view of the said representation, the learned Judge, after observing that it would be open to the petitioner to seek for the relief before the Divisional Bench in the writ appeal itself at the time of final disposal, dismissed the same. Hence the writ appeal No.845/2001 by the writ petitioner Trust.

5.Since the main Writ Appeal No.2064/2000 is filed by the Commissioner, Madurai Corporation, we will render our decision in the said appeal and depending on the outcome, the other writ appeal will be disposed of.

6.Heard Mr.V.T.Gopalan, learned senior counsel for the appellant Madurai Corporation and Mr.K.V.Ananthakrishnan, for the contesting first respondent/ writ petitioner.

7.Mr.V.T.Gopalan, learned senior counsel for the Madurai Corporation contended that the learned Single Judge has committed an error in directing the Corporation to pay compensation after a period of two decades and the writ petition ought to have

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been dismissed on the ground of laches. In any event, according to him, the direction regarding determination of compensation, that is on the basis of market value prevailing on the date of taking possession and the further direction for payment of interest at the rate of 15# per annum from the date of taking possession cannot be sustained.

8.On the other hand, Mr.K.V.Ananthakrishnan, learned counsel for the first respondent/writ petitioner, by drawing our attention to the several letters/petitions commencing from 1982 ending with 2000, submitted that inasmuch as the Corporation trespassed into their lands and taken possession for laying a road without payment of compensation, in view of the several petitions and representations the learned Single Judge is perfectly right in granting direction and the writ petition cannot be dismissed on the ground of laches or inaction on their part. He also contended that in view of the attitude of the public body-Madurai Corporation, the direction of the learned Judge for determination of the compensation as well as payment interest at the rate of 15% per annum is also fully justified and no ground exists for interference.

9.We have perused the relevant materials and carefully considered the rival contentions.

10.It is not in dispute that pucca road was laid down in the land of the first respondent/writ petitioner- Trust even in the year 1980. The extent involved is 5.22 cents i.e. 2280 sq.ft. Mr.V.T.Gopalan, learned senior counsel, contended that the Corporation used the said land for a public purpose and inasmuch as the other persons executed gift deeds, the writ petitioner is not justified in asking compensation, that too after two decades. In other words, according to him, the learned Single Judge ought to have dismissed the writ petition on the ground of delay and laches. In support of the above contention, the learned senior counsel very much relied on the judgment of the Supreme Court reported in (1995) 4 SCC 683 - (State of Maharashtra vs. Digambar). The facts in the above decision of the Supreme Court are:

> During 1971-72 when acute scarcity conditions prevailed in nearly 23,000 villages of the State of Maharashtra, large scale scarcity relief works had to be undertaken by the State Government to provide employment to small agriculturists and agricultural labour of those villages for earning their livelihood. Such relief works included 38,000 km of road works. No compensation amount was paid to the lands utilised in road works. In fact, Collectors were advised and instructed to impress upon the non-official and other social workers to use their good offices in ensuring that the land required for such scarcity relief works were donated to the Government without any claim for compensation.

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In the year 1991, an agriculturist of Vepani village of Maharashtra filed a writ petition W.P.No.3124/1991 under Article 226 of the Constitution of India in the Bombay High Court, Aurangabad Bench against the State of Maharashtra and the relief sought for in that writ petition was to issue a direction to the Government of Maharashtra to grant compensation to him for his land alleged to have been utilised by the Government without his consent for Vepana-Gogri Road--a road work carried out by the agencies of the State Government. The Government Pleader appeared for the State of Maharashtra before the Division Bench urged for dismissal of the writ petition on the ground of laches on the part of the writ petitioner, i.e. undue delay of 20 years, which had occurred in the filing of the writ petition. But the Division Bench refused to entertain the ground of undue delay and allowed the writ petition on 10.10.1991, against which the State of Maharashtra filed SLP(C)No.10723/1993.

11.The main contention on behalf of the appellant/State of Maharashtra against the sustainability of the judgment of the High Court related to exercise of discretionary power conferred on the High Court under Article 226 of the Constitution of India for grant of relief of payment of compensation to the writ petitioner for his land alleged to have been utilised by the officers of the State Government in the year 1971-72 for construction of a public road against his wish refusing to consider the plea of laches or undue delay. It was also projected before the Supreme Court that the High Court had come to the conclusion that the delay cannot disentitle a citizen from seeking a relief under Article 226 of the Constitution when his claim for relief is based on deprivation of property by the State or its agencies. Rejecting the said view, the Hon'ble Supreme Court has concluded in paragraph 14 of the judgment as follows:

"14.How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a Welfare State, is also difficult to comprehend. Where the relief sought

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under Article 226 of the Constitution by a person against the Welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for what of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

12.After referring to various decisions of the foreign courts and the earlier judgments, the Hon'ble Supreme Court has concluded in paragraphs 23, 24, 25 and 26 of the judgment as under:

"23.Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

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24.Since we have held earlier that the person seeking grant of relief under Article 226 of the Constitution, even if it be against the State, is required to satisfy the High Court that he was not guilty of laches or undue delay in approaching it for relief, need arises for us to consider whether the respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although a certain extent of his land was taken away in the year 1971-72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971-72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefor, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

25.In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioner's demands, the State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

26.Thus, when the writ petitioner (respondent here) was guilty of laches or undue delay in approaching the High Court, the principle of laches

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or undue delay adverted to above, disentitled the writ petition (respondent here) for discretionary relief under Article 226 of the Constitution from the High Court, particularly when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches. The High Court, therefore, was wholly wrong in granting relief in relation to inquiring into the allegation and granting compensation for his land alleged to have been used for scarcity relief road works in the year 1971-72. As seen from the judgment of the High Court, the allegation adverted to above, appears to be the common allegation in other 191 writ petitions where judgments are rendered by the High Court following the judgment under appeal and which are subject of SLPs in this Court that are yet to be registered. We have, therefore, no hesitation in holding that the High Court had gone wholly wrong in granting the relief which it has given in the judgment under appeal, and judgments rendered following the said judgment in other 191 writ petitions said to be the subject of SLPs or otherwise. All the said judgments of the High Court, having regard to the fact that they were made in writ petitions with common allegation and seeking common relief, are liable to be interfered with and set aside in the in teress of justice even though only learned counsel appearing for a few writ petitioners were heard by us."

13.The above decision makes it clear that if there is no sufficient material or satisfactory reason/reasons for delay which had occurred between the alleged taking of possession of land and the date of filing of the writ petition in the High Court, the discretionary relief in the writ petition under Article 226 of the Constitution cannot be granted. The Hon'ble Supreme Court has also noted that though the petitioner therein made several requests for compenstion, after finding that those allegations/averments are no way sufficient to hold that the petitioner has explained properly and satisfactorily the undue delay of 20 years which occurred between the alleged taking possession and the date of filing of the writ petition and concluded that no relief could be granted in the writ petition on the ground of laches or undue delay.

14.Now let us test whether the writ petition filed by the writ petitioner before us in the year 2000 is liable to be dismissed on the ground of laches as enunciated in the above referred Supreme Court decision. In the affidavit filed in support of the writ petition, the managing trustee of the petitioner Trust has specifically stated that in the year 1980 the officials of the Madurai Corporation made an attempt to trespass into their lands for the purpose of laying two roads east to west. It is also stated, before the above said attempt, letters dated 15.11.1978 and 02.08.1979 and telegrams dated 05.01.1980 were sent to the Madurai

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Corporation anticipating the attempt of trespass. It is also specifically stated that on 01.09.1980 notices under Section 80 CPC and Section 490 of the Madurai City Municipal Corporation Act were sent to the District Collector and the Commissioner of Madurai Corporation. In paragraph 2 of the affidavit, apart from referring to those details, it is also stated that the managing trustee had written number of letters/petitions claiming compensation for the land forcibly occupied by the Corporation to various authorities, including the Chief Minister of Tamil Nadu. The various letters/petitions are dated 27.12.1982, 04.01.1988, 14.03.1988, 09.05.1988, 19.06.1989, 15.12.1994, 23.05.1997, 05.08.1997, 19.10.1997, 21.12.1997, 06.02.1998, 16.04.1998, 13.07.1998, 17.08.1998, 17.08.1998, 24.08.1998, 10.11.1998, 16.11.1998, 18.11.1998, 05.01.1999, 06.01.1999, 30.01.1999, 23.02.1999, 01.03.1999, 03.03.1999, 11.03.1999, 22.03.1999, 13.04.1999, 05.05.1999, 15.06.1999, 30.06.1999, 15.11.1999, 04.12.1999, 10.01.2000, 30.03.2000, 15.05.2000 and 24.05.2000. Those details are furnished in paragraph 2 of the affidavit. It is also the claim of the writ petitioner that in respect of those letters/petitions, he received reply for one or two letters/petitions. In paragraph 3 also the petitioner has highlighted the subsequent letters and petitions praying compensation for the land utilised for formation of road.

15.In the State of Maharashtra Case cited supra, the Hon'ble Supreme Court has concluded that the request made to the State Government and various agencies are not sufficient to wriggle out of the principle of laches. In our case, the details mentioned in the affidavit and typed set of papers amply show that from the date of trespass i.e. 1980 till the date of filing of the writ petition, the petitioner sent several petitions and representations, not only to the Madurai Corporation but also to the higher authority, namely State Government, even upto the level of Chief Minister. In fact, the petitioner has catalogued all those letters in the form of typed set filed before us.

16.It is also relevant to refer the approach of the Madurai Corporation. As rightly pointed out by the learned Single Judge, when the writ petitioner made a request either for compensation for the land utilised or provision of alternate land from the hands of Corporation, the same was rejected with a request to the petitioner to execute a gift deed. It is also stated that if the request of the petitioner is accepted, the Corporation has to pay similar claim to various other persons. As rightly observed by the learned Single Judge, the above said both the reasoning are unacceptable. If the petitioner Trust volunteers and executes the gift deed, there is no difficulty in accepting the same. However, from the date of utilisation of the land, all along the petitioner Trust is fighting for compensation or for alternate land. In such circumstances, in view of the fact that neither the Corporation nor the Government resorted to acquisition proceedings, it is but proper on their part to pay reasonable amount as compensation.

17.It is also relevant to refer the latest decision of the Supreme Court reported in 2005-3-L.W.160 (State of U.P. &

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others vs. Manohar), wherein, in an identical circumstance, their Lordships of the Supreme Court upheld the order of the High Court giving direction for payment of compensation in a writ petition filed under Article 226 of the Constitution and dismissed the appeal by the State with exemplary costs of Rs.25,000/-. In that case, the respondent before the Supreme Court filed a writ petition before the Allahabad High Court seeking to issue a writ of mandamus to the appellant/State of Uttar Pradesh and its officers to determine the compensation in respect of his land which had been taken forcibly without following any process of law. It was his case that he had been dispossessed from the land and the land was taken by the appellant without payment of any compensation and despite repeated appeals made by him nobody was prepared to pay compensation. He also enclosed several correspondences. While affirming the order of the High Court granting compensation exercising jurisdiction under Article 226 of the Constitution, their Lordships of the Supreme Court observed in paragraphs 6 and 7 of the judgment as follows:

> "6.Ours is a constitutional democracy and the rights available to the citizens are declared by the constitution. Although Article 19(1)f) was deleted by the 44th Amendment to the Constitution, Article 300A has been placed in the Constitution, which read as follows:
>
> > "300A-Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law"
>
> 7.This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

After saying so, their Lordships dismissed the appeal of the State with exemplary costs of Rs.25,000/-.

18.Though Mr.V.T.Gopalan, learned senior counsel pointed out that the above referred latest judgment is of two judges Bench and the earlier one, relied upon by him is three judges Bench, in view of the distinction which we have pointed out in the earlier paragraphs, we are of the considered view that the writ petitioner cannot be blamed for inaction or not taking steps at the appropriate time. On the other hand, from the date of trespass till the date of filing of the writ petition, we are satisfied that the writ petitioner Trust was fighting from A to Z, not only with the Commissioner, Corporation of Madurai but also upto the level of Chief Minister, State of Tamil Nadu. In such circumstances, we find that

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the authority for deprivation of the petitioner's property is the appellant, which is none else than the Corporation. In our view, in the light of the explanation offered that the petitioner was vigilantly fighting for just compensation or alternate land, this case was a suitable one for exercising the writ jurisdiction by the High Court under Article 226 of the Constitution and the same was rightly exercised by the learned Single Judge. We are unable to agree with the contentions raised by the learned senior counsel and we are in agreement with the view expressed by the learned Single Judge.

19.Coming to the second contention regarding direction for determining market value and interest, the direction to the Madurai Corporation to verify the market value of the land from the office of Sub-Registrar's Office as per the guidelines and determine the compensation cannot be faulted with. Undoubtedly the petitioner Trust is entitled for compensation as directed by the learned Single Judge. In view of the attitude of the Madurai Corporation, we are of the view that the petitioner is entitled for interest for the compensation amount from the date of dispossession. However, in view of the fact that the land was sought to be utilised for a public purpose, namely formation of road, we intend to reduce the burden on the Corporation. Accordingly, ends of justice would be met by awarding interest at the rate of 8% per annum from the date of taking possession till the date of payment and set aside the direction for payment of cost. In view of the above conclusion, no separate order is required in Writ Appeal No.845/2001.

20.Inasmuch as the Corporation has not paid the compensation as directed by the learned Single Judge in view of the stay granted by the Division Bench, the appellant Madurai Corporation is granted eight weeks time to comply with the above order.

22.With the above modification, both the appeals are disposed of with no order as to costs. Connected CMP No.18114/2000 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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Anna Maligai,
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1 cc to Mrs.Hema Sampath, Advocate, Sr. 34508
1 cc to Mr.V.Sitharanjandas, Advocate, Sr. 34019
1 cc to Mr.P.Srinivas, Advocate, Sr. 34051

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